Per Curiam.

WILSON ET AL. v. LOEW'S INCORPORATED ET AL.

CERTIORARI TO THE DISTRICT COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT.

No. 33. Argued January 8, 1958.—Decided March 3, 1958.

A number of former employees of the motion-picture industry brought suit in a California state court for damages and injunctive relief against a number of motion-picture producers and distributors, alleging that the latter directly or indirectly controlled all motion-picture production and distribution in the United States and all employment opportunities therein and had agreed to deny employment to all employees and persons seeking employment who refused, on grounds of the Fifth Amendment, to answer questions concerning their political associations and beliefs put to them by the Un-American Activities Committee of the House of Representatives. The action of the trial court in sustaining a demurrer to the complaint without leave to amend was affirmed on appeal, on the ground that the plaintiffs had failed to allege particular job opportunities. The plaintiffs petitioned this Court for certiorari, claiming that they had been denied due process and equal protection of the laws in violation of the Fourteenth Amendment, and this Court granted certiorari. *Held:* The writ is dismissed as improvidently granted because the judgment rests on an adequate state ground.

Reported below: 142 Cal. App. 2d 183, 298 P. 2d 152.

Robert W. Kenny and *Ben Margolis* argued the cause for petitioners. With them on the brief was *Samuel Rosenwein*.

Irving M. Walker and *Herman F. Selvin* argued the cause and filed a brief for Loew's Incorporated et al., respondents.

Guy Richards Crump and *Henry W. Low* submitted on brief for Doyle et al., respondents.

Edward J. Ennis and *A. L. Wirin* filed a brief for the American Civil Liberties Union, as *amicus curiae*, urging reversal.

PER CURIAM.

The writ is dismissed as improvidently granted because the judgment rests on an adequate state ground.

MR. JUSTICE DOUGLAS, dissenting.

By demurrer to petitioners' complaint, the respondents in this case admitted that they agreed with each other to exclude from employment all persons who refused, on the grounds of the Fifth Amendment, to answer questions concerning their political associations and beliefs put by the Un-American Activities Committee of the House of Representatives. The complaint alleged, and the demurrer thereby conceded, that petitioners had considerable experience in the motion picture industry; and that respondents directly or indirectly controlled all motion picture production and distribution in the United States and all employment opportunities therein. The California court sustained the demurrer on the ground that petitioners had not "alleged that but for defendants' alleged interference any one of plaintiffs would, or even probably or possibly would, have been employed in the industry." 142 Cal. App. 2d 183, 195, 298 P. 2d 152, 160.

This ruling on California law should result in a reversal of this judgment.

This is a case of alleged interference with the pursuit of an occupation, not an alleged interference with a particular contract or business relationship. The California cases on interference with the "right to work" are broad in scope. In *James* v. *Marinship Corp.*, 25 Cal. 2d 721, 155 P. 2d 329, the California Supreme Court held that a union could not exclude Negroes from membership in the union when at the same time there was a closed shop in the industry. The *Marinship* case was later followed in *Williams* v. *International Brotherhood*, 27 Cal. 2d 586, 165 P. 2d 903, where some of the plaintiffs were former

employees. No showing of the possibility of employment was made. In *Williams* the court emphasized that a "closed shop agreement with a single employer is in itself a form of monopoly"; and it condemned attempts by a union "to control by arbitrary selection the fundamental right to work." 27 Cal. 2d, at 591, 165 P. 2d, at 906. Here on the pleadings the respondents comprise a nation-wide monopoly over the industry and arbitrarily place petitioners on a "black list."

Dotson v. *International Alliance,* 34 Cal. 2d 362, 210 P. 2d 5, held that out-of-state workers, qualified for union membership, could recover damages "for wrongful interference with their right to work" against the union which denied membership. 34 Cal. 2d, at 374, 210 P. 2d, at 12. No showing of a likelihood of employment was made in that monopoly situation.

Surely then, the failure of these petitioners to allege a particular job opportunity does not mean they did not state a cause of action within the meaning of those California cases. Their pleadings seem to bring them squarely within those decisions. The fact that damages may be uncertain is no barrier to enforcement of the right to work. See *Harris* v. *National Union of Cooks and Stewards,* 98 Cal. App. 2d 733, 738, 221 P. 2d 136, 139.

I, therefore, conclude that the lower court, in not mentioning these cases nor differentiating them, and drawing almost entirely on decisions from other jurisdictions, has fashioned a different rule for this case. I can see no difference where the "right to work" is denied because of race and where, as here, because the citizen has exercised Fifth Amendment rights. To draw such a line is to discriminate against the assertion of a particular federal constitutional right. That a State may not do consistently with the Equal Protection Clause of the Fourteenth Amendment. *Williams* v. *Georgia,* 349 U. S. 375.